

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS  
BY A PERSON IN STATE CUSTODY**

6:19-cv-1797-JM

United States District Court	District of Oregon
Name (under which you were convicted): <b>JUSTIN HUBBARD</b>	Docket or Case No.: <b>14CR08330</b>
Place of Confinement: <b>MACLAREN YOUTH CORRECTIONAL</b>	Prisoner (SID) No.:
Petitioner (include the name under which you were convicted) <b>JUSTIN HUBBARD</b>	Respondent (authorized person having custody of petitioner) <b>v. OREGON YOUTH AUTHORITY</b>
The Attorney General of the State:	

**CONVICTION UNDER ATTACK**

1. Name and location of court that entered the judgment of conviction you are challenging:

**MULTNOMAH COUNTY CIRCUIT COURT**

2. Criminal docket or case number (if known): **14CR08330**

3. (a) Date of judgment of conviction (if known): **11/24/2014**

(b) Date of sentence: **11/24/2014**

4. Length of sentence: **28 yrs**

5. Identify all crimes for which you were convicted and sentenced in this case:

**KIDNAPPING IN THE FIRST DEGREE; SODOMY IN THE FIRST DEGREE;  
UNLAWFUL SEXUAL PENETRATION IN THE FIRST DEGREE (2 COUNTS);  
BURGLARY IN THE FIRST DEGREE; SEXUAL ABUSE IN THE FIRST  
DEGREE**

6. What was your plea? (Check one)

Not Guilty

Guilty

Nolo Contendere (No Contest)

Insanity Plea

If you entered a guilty plea(s), list what crimes you pleaded guilty to, and what crimes you did not plead guilty to:

**GUILTY PLEA: ALL ABOVE LISTED CRIMES  
DISMISSED: SEXUAL ABUSE IN THE FIRST DEGREE (0 COUNTS);  
KIDNAPPING IN THE SECOND DEGREE; SODOMY IN THE FIRST DEGREE;  
ATTEMPT TO COMMIT A CLASS A FELONY; STRANGULATION; INVASION OF  
PERSONAL PRIVACY**

7. If you pleaded not guilty, what kind of trial did you have? (Check one)

Jury

Judge Only

8. Did you testify at trial?

Yes

No

**EXHAUSTION OF STATE REMEDIES**

***DIRECT APPEAL***

9. Did you directly appeal from the judgment of conviction?

Yes

No

a. Name of court: \_\_\_\_\_

b. Docket or case number (if known): \_\_\_\_\_

c. Result: \_\_\_\_\_

d. Date of result and citation (if known): \_\_\_\_\_

e. Grounds raised:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Did you seek further review of the decision on appeal by a higher state court?

Yes

No

a. Name of court: \_\_\_\_\_

b. Docket or case number (if known): \_\_\_\_\_

c. Result: \_\_\_\_\_

d. Date of result and citation (if known): \_\_\_\_\_

e. Grounds raised:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

11. Did you file a petition for certiorari in the United States Supreme Court?

Yes

No

a. Docket or case number (if known): \_\_\_\_\_

b. Result: \_\_\_\_\_

c. Date of result and citation (if known): \_\_\_\_\_

d. Grounds raised:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. If you did not directly appeal from the judgment of conviction, explain briefly why you did not:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

***POST-CONVICTION RELIEF***

13. Did you file a petition for state post-conviction relief?

Yes  No

a. Name of court: MULTNOMAH COUNTY CIRCUIT COURT

b. Docket or case number (if known): 17 CV 06039

c. Nature of proceeding: \_\_\_\_\_

d. Did you receive an evidentiary hearing?

Yes  No

e. Result: DENIED

f. Date of result and citation or case number (if known): 03-01-2018

g. Grounds raised:  
(1) GUILTY PLEAS NOT KNOWING, VOLUNTARY, OR  
INTELLIGENT  
(2) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

14. Did you appeal the result of your state post-conviction case?

Yes  No

a. Name of court: COURT OF APPEALS OF THE STATE OF OREGON

b. Docket or case number (if known): 17CV06039

c. Result: AFFIRMED WITHOUT OPINION

d. Date of result and citation (if known): 07-19-2019

e. Grounds raised:

THE POST CONVICTION COURT ERRED IN DENYING PETITIONER RELIEF ON THE ALLEGATION THAT TRIAL COUNSEL WAS INEFFECTIVE AND INADEQUATE FOR FAILING TO ENSURE HIS GUILTY PLEA WAS KNOWING, INTELLIGENT, AND VOLUNTARY.

15. Did you seek further review of the decision on appeal by a higher state court?

Yes

No

a. Name of court: \_\_\_\_\_

b. Docket or case number (if known): \_\_\_\_\_

c. Result: \_\_\_\_\_

d. Date of result and citation (if known): \_\_\_\_\_

e. Grounds raised:

16. If you did not appeal from the adverse decision in your state post-conviction case, explain briefly why you did not:

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**GROUND FOR RELIEF**

17. For this petition, state *concisely* every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION: In order to proceed in the federal court, normally you must exhaust (use up) your available state court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

For your information, the following is a list (a-j) of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise grounds other than those listed.

- a. Conviction obtained by plea of guilty that was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- b. Conviction obtained by use of coerced confession.
- c. Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- d. Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- e. Conviction obtained by a violation of the privilege against self-incrimination.
- f. Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- g. Conviction obtained by a violation of the protection against double jeopardy.
- h. Conviction obtained by action of a grand or petit jury that was unconstitutionally selected and impaneled.
- i. Denial of effective assistance of counsel at trial or on appeal.
- j. Denial of right of appeal.

A. **Ground One:**

CONVICTION OBTAINED BY PLEA OF GUILTY THAT WAS NOT KNOWINGLY MADE + DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL.

Supporting FACTS (state *briefly* without citing cases or law):

MY TRIAL COUNSEL FAILED TO ADEQUATELY ADVISE ME AND FAILED TO DISCLOSE ALL IMPORTANT INFORMATION DURING PLEA NEGOTIATIONS. HIS FAILURE TO DISCLOSE THAT THERE WAS NO EVIDENCE TO SUPPORT COUNT 8, AND SPECIFICALLY, TO DISCLOSE THE VICTIM'S STATEMENT CORROBORATED MY OWN (THAT THE CRIMES ALLEGED IN COUNT 8, THE ONLY COUNT TO CARRY A MANDATORY MINIMUM OF 25 YEARS, DID NOT OCCUR) PREVENTED ME FROM MAKING ANY INFORMED AND KNOWING DECISION ABOUT WHETHER TO GO TO TRIAL.

B. **Ground Two:**

INEFFECTIVE ASSISTANCE OF COUNSEL

Supporting FACTS (state *briefly* without citing cases or law):

MY TRIAL COUNSEL'S FAILURE TO INVESTIGATE MY CLAIM THAT I DID NOT COMMIT THE CRIME ALLEGED IN COUNT 8 AS THE VICTIM'S STATEMENT CORROBORATED MY CLAIM RESULTED IN A DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL.

C. Ground Three:

CONVICTION OBTAINED BY PLEA OF GUILTY THAT WAS UNLAWFULLY INDUCED OR NOT MADE VOLUNTARILY.

Supporting FACTS (state *briefly* without citing cases or law):

I REPEATEDLY INFORMED MY TRIAL COUNSEL THAT I DID NOT WANT TO TAKE THE PLEA OFFER. MY TRIAL COUNSEL INSISTED AND TOLD ME THE PLEA OFFER WAS THE ONLY OPTION I HAD.

D. Ground Four:

CLAIM OF INNOCENCE

Supporting FACTS (state *briefly* without citing cases or law):

I BELIEVE THERE IS SUPPORTING EVIDENCE THAT WAS NEVER FULLY INVESTIGATED WHICH SUPPORTS MY CLAIM OF INNOCENCE OF COUNT 8, UNLAWFUL SEXUAL PENETRATION IN THE FIRST DEGREE.

OTHER INFORMATION

18. Please answer these additional questions about the petition you are filing:

a. Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?

Yes

No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL AND CONVICTION BY A GUILTY PLEA THAT WAS NOT MADE KNOWINGLY.

I DID NOT PETITION THE OR SUPPeme COURT BECAUSE I DID NOT KNOW THAT I COULD

b. Is there any ground in this petition that has not been presented in some state or federal court? If so, indicate which ground or grounds have not been presented, and state your reasons for not presenting them:

YES. I DID NOT KNOW I COULD TRY TO MAKE  
A CLAIM OF INNOCENCE.

19. Do you have any petition or appeal now pending (filed and not decided yet) in any court, state or federal, for the judgment you are challenging here?

Yes

No

If the answer is "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

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20. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

a. At preliminary hearing:

BRIAN SCHMONSEES

b. At arraignment and plea:

BRIAN SCHMONSEES

c. At trial:

(None)

d. At sentencing:

BRIAN SCHMONSEES

e. On appeal:

N/A

f. In any post-conviction proceeding:

NOEL GREFENSON: 1415 LIBERTY ST. SE, SALEM, OR 97302

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g. On appeal from any adverse ruling in a post-conviction proceeding:

JEDEPIAH PETERSON: 1500 SW FIRST AVE., SUITE 1090  
PORTLAND, OR 97201

21. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?

Yes

No

a. If yes, in what court was the prior action filed? \_\_\_\_\_

b. What was the prior case number? \_\_\_\_\_

c. Was the prior action:  Decided on the merits, or

Dismissed on procedural grounds

d. Date of decision: \_\_\_\_\_

e. Are there any issues in this petition raised in the prior petition?

Yes

No

f. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition?

Yes\*

No

\*If the answer is "Yes," you *must* attach a copy of the order received from the Ninth Circuit Court of Appeals.

22. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes

No

a. If so, give the name and location of the court that imposed the sentence to be served in the future:

\_\_\_\_\_

b. Give the date and length of sentence to be served in the future:

\_\_\_\_\_

c. Have you filed, or do you contemplate filing, any petition attacking the judgment that imposed the sentence to be served in the future?

Yes

No

23. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition:

I BELIEVED MY DEADLINE TO FILE A FEDERAL HABEAS PETITION ONLY BEGAN AFTER I COMPLETED MY POST CONVICTION RELIEF PETITION.

24. Date you are mailing (or handing to correctional officer for mailing) this petition to the Court:\*

11-4-19

WHEREFORE, petitioner prays that the Court will grant such relief to which he or she may be entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody.

\_\_\_\_\_  
Signature of Attorney (if any)

**DECLARATION UNDER PENALTY OF PERJURY**

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

10-23-19

Date

Justin Hubbard

\_\_\_\_\_  
Signature of Petitioner

\* As noted in the instructions to this form (at #8), if you are incarcerated at Snake River Correctional Institution, you must comply with the requirements of the E-Filing Pilot posted at the institution and set forth in Standing Orders 2017-9 and 2018-5. Accordingly, you must submit your filings in this case to Snake River Correctional Institution staff for scanning and electronic submission, instead of mailing the filings using the U.S. Postal Service. Please indicate the date you submitted this petition to Snake River Correctional Institution staff for scanning and electronic submisstion, if you are incarcerated there.